REMARKS

Claims 1-21 are pending. Claims 22-29 have been withdrawn.

Claims 1 – 7, 10 - 15, 17, 17, 19, and 20 have been rejected under Section 102 bāsed on United States Patent Number 4,150,522 (Burger). Claims 14 and 15 have also been rejected under Section 112. Claims 16 and 18 have been rejected under Section 103 based on a combination of Burger and United States Patent Number 5,915,595 (Dow). Claim 21 has been rejected under Section 103 based on a combination of Burger and United States Patent Number 6,439,430 (Gilroy).

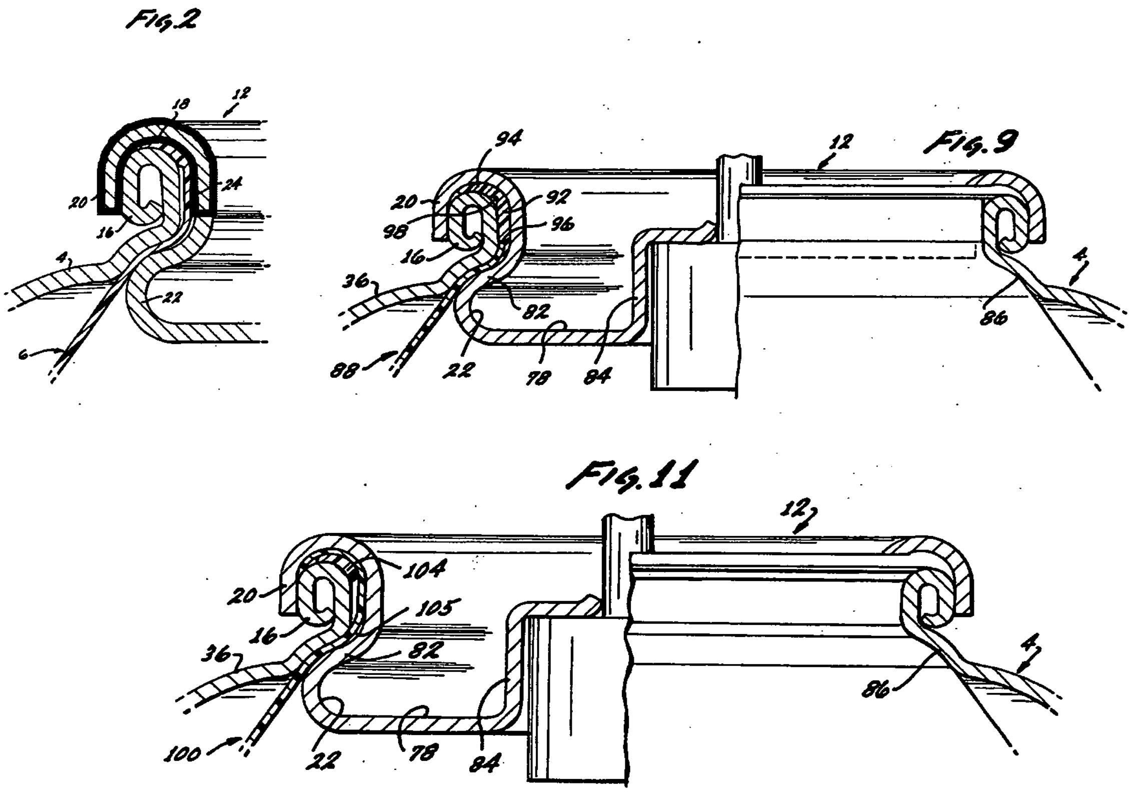
Applicants in this response:

- amend claim 1 to explain the structure of the seam and illustrate its allowability;
- rewrite allowable claim 8 in independent form;
- amend claim 14 correct the indefiniteness of claims 14 and 15; and
- explain that claims 13 (which is rewritten in independent form) and 16 are allowable over a combination Burger and Dow because, first, Burger cannot be modified according to the teachings of Dow because the suggested modification would change a fundamental principle of operation of Burger (the primary reference) and, second, even assuming for the purpose of argument the combination was permissible, it would not satisfy all of the limitations of claim 1.

Section 102 Rejection

Claim 1 is directed to a container having a body, a cap and a "throat formed between a portion of the body and a portion of the cap;" also, a "distal portion of the throat terminat[es] at the seam." The inner container has a "*thickened portion* [that is] disposed in the throat *and spaced apart from the seam*." (emphasis added). Also, applicant adds the following text in this response to explain the structure of the seam: "said cap seam portion including a pair of opposing sidewalls and an arcuate portion formed therebetween, the body seam portion is at least partially disposed between the relatively opposing sidewalls of the cap seam portion." The added text is fully supported by the specification, such as in Figures 1A, 2A, 3A, and 4A, and paragraph 30.

The Burger reference teaches a crimping process to join neck 16 of outer container 4 to ears 80 of cap 12. Ears 80 of cap 12 are disposed over neck 16 of container 4. A crimped portion 20 contacts an outboard side of neck 16. Flexible ring 18 is generally disposed between cap 12 and container 14 in a space 24 inboard of crimped portion 20 as shown in Figure 2. Applicants reproduce Figures 2, 9, and 11 below to illustrate the structure disclosed in Burger:



Burger (PRIOR ART) Figures

Applicants assume that the office action interprets Burger's crimped portion 20 to constitute the claimed "seam" and Burger's space 24 to constitute the claimed "throat." This construction, for the purpose of argument, would appear to be required to satisfy the limitations of as-filed claim 1.

Amended claim 1, however recites that the "cap seam portion [has] a pair of opposing sidewalls and an arcuate portion therebetween." For clarity of argument, the structure of

Burger that could correspond to this structure has been highlighted above in Burger's Figure 2. Further, "a portion of the body seam portion is disposed between the relatively opposing sidewalls of the cap seam portion." The corresponding structure (again, for the purpose of argument) in Burger to the recited "seam" structure encompasses or overlaps space 24. And Burger discloses neither that the "thickened portion being disposed in the throat" nor that the "thickened portion being . . . spaced apart from the seam," as recited in Applicants' claim 1 In fact, Burger discloses that its "thickened portion" of its inner container is disposed nearly entirely within the portion that corresponds to a "seam." Accordingly, Burger neither teaches nor suggests the limitations of claim 1.

Section 103 Rejection of Claim 21

Applicants submit that because the claim from which it depends is allowable, the Section 103 rejection of claim 21 is moot.

Section 103 Rejection of Claims 16

Claim 16 recites a "double seam" and depends from claim 13. Claim 13 recites a "rolled seam." Applicants herein amend claim 13 to recite all of the limitations of as-filed claim 1. A "double seam" is a type of "rolled seam," and each is distinguishable from the structure and function of a "crimp." Accordingly, even though claim 13 is rejected based on Section 102, Applicants submit that the crimp disclosed in Burger does not constitute a "rolled seam," and therefore claim 13 could only have been rejected under the same grounds as the rejection of claim 16. Applicants now explain that claims 13 and 16 can not be permissibly rejected based on the combination of Burger and Dow.

Dow discloses a double seam for joining a container body and cap. It appears that the office action suggests that ears 80 of the cap and neck 16 of the container be formed into a double seam as taught by Dow. However, the combination of Burger and Dow is impermissible and, even if the references were to be combinable, the combination would not satisfy all of the limitations of amended claim 13 (nor claim 16).

Providing a space (24) for housing the thickened portion of flexible ring (18) to prevent tearing of the inner container (6) is a fundamental principle of operation of the teachings of Burger. For example, Burger recites in its Summary of the Invention:

> During crimping, a space is provided between the neck opening and a portion of the surface of the dispensing cap to prevent tearing of the flexible inner container during crimping.
> (Burger, col. 2, lines 21-24).

Modifying Burger to use the double seam of Dow would likely tend to crush the space 24 and create the forces and possible metal movement that may subject the inner container 6 and flexible ring 18 to the tearing phenomenon that Burger is intended to prevent. Accordingly, it is impermissible to modify the structure of Burger according to the teaching of a double seam in Dow because it would change a fundamental principle of operation of Burger.

Even assuming for the sake of argument that Burger's structure could be modified to form a rolled seam or a double seam, the resulting structure would not satisfy the limitation "said thickened portion being disposed in the throat and spaced apart from the seam." Neither Burger nor Dow teach or suggest this limitation. Accordingly, Applicants submit that claims 13 and 16, and other claims which depend from them, are allowable.

Section 112 Rejections

Claim 14 is amended to delete the phrase "an outermost diameter of the seam is smaller than" to correct an editorial error and make the claim definite.

Allowable Subject Matter

The pending office action states that claims 8 and 9 are allowable. Claim 8 is rewritten in independent form in this response. Amended claim 8 includes the limitations of as-filed claim 1, but does not include all of the limitations of the intervening claims. Rather, only the limitations of the intervening claims 4 and 5, which provided antecedent basis for as-filed claim 8, are included in amended claim 8.

CONCLUSION

Applicants submit that all of the claims are in allowable condition and request either favorable consideration of the claims and reconsideration of the pending rejections. If the examiner determines that a telephone conversation would further the prosecution of this case, he is invited to telephone the undersigned at his convenience.

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